

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

PAWS UP RANCH, LLC; PAWS UP
CATTLE COMPANY, LLC; PAWS UP
FOUNDATION; PAWS UP LAND
COMPANY, LLC,

Case No.: 2:12-cv-01547-GMN-NJK

ORDER

Plaintiffs,

vs.

CHRISTOPHER GREEN; LAWTON HALL;
ALTUM DEVELOPMENT GROUP, LP;
GREENHALL CAPITOL, LLC; RIVERSIDE
PREMIER DEVELOPMENT, LLC; LION
SHARE CAPITOL, LLC; HAYMAN
PRIVATE EQUITY; MASTER VISION
GROUP, USA, INC.; SOVREN
MANAGEMENT, LLC; MOUNTAIN
ATLANTIC LENDING, INC.; COHEN
COMMERCIAL EQUITY, LLC; EQUITY
FINANCING, LTD; WORLDWIDE
INVESTMENT, LLC; METROPOLITAN
BANKCORP; MKS, LLC; and DOES I
through X,

Defendants.

Pending before the Court is the Motion for Leave to File a Second Amended Complaint (ECF No. 168) filed by Plaintiffs Paws Up Ranch, LLC (“Paws Up Ranch”), Paws Up Cattle Company, LLC (“Paws Up Cattle”), Paws Up Foundation (“Paws Up Foundation”), and Paws Up Land Company, LLC (“Paws Up Land”) (collectively the “Paws Up Entities” or “Plaintiffs”) on February 13, 2014. Defendant Lawton Hall (“Defendant Hall”) filed his Response in Opposition (ECF No. 177) on February 27, 2014, and Plaintiffs filed their Reply (ECF No. 186) on March 10, 2014. The motion was referred to Magistrate Judge Nancy J.

1 Koppe pursuant to 28 U.S.C. § 636(b)(1)(B) and District of Nevada Local Rule IB 1-4. On
2 March 18, 2014, Judge Koppe recommended that this Court enter an order denying Plaintiffs’
3 Motion for Leave to File a Second Amended Complaint. (Report & Recommendation, ECF No.
4 194). Plaintiffs filed their Objection to the Report & Recommendation (ECF No. 203) on April
5 4, 2014. Defendant Hall filed a Response to the Objection (ECF No. 206) on April 14, 2014,
6 and Plaintiffs filed a Reply (ECF No. 207) on April 23, 2014.

7 Also pending before the Court is the Motion to Dismiss Amended Complaint (ECF No.
8 173) filed by Defendant Altium Development Group, LP (“Defendant Altium”) on February
9 20, 2014 to which Defendant Hall filed a Non-Objection and Limited Joinder (ECF No. 182) on
10 March 6, 2014. Plaintiffs filed a Response in Opposition (ECF No. 187) on March 10, 2014,
11 and Defendant Altium filed its Reply (ECF No. 197) on March 20, 2014.

12 Finally, also pending before the Court is the Motion to Dismiss Defendant Hall’s Cross-
13 Claims (ECF No. 175) filed by Defendant Altium on February 20, 2014. Defendant Hall filed
14 his Response in Opposition (ECF No. 183) on March 6, 2014, and Defendant Altium filed its
15 Reply (ECF No. 192) on March 17, 2014.

16 **I. BACKGROUND**

17 Plaintiffs filed their Amended Complaint on October 9, 2012. (Am. Complaint, ECF
18 No. 9). In the Amended Complaint, Plaintiffs allege that Defendant Hall and his business
19 partner, Defendant Christopher Green (“Defendant Green”), jointly owned and operated
20 Defendant Greenhall Capital, LLC (“Greenhall”) and held themselves out as experts in
21 arranging debt and equity financing for businesses. (*Id.* ¶¶ 2, 20). Plaintiffs further allege that
22 they entered into financial advisory and consulting agreements with Defendants Altium and
23 Greenhall under which they paid various upfront expenses and retainer fees in excess of
24 \$1,000,000 for services that the Defendants never performed. (*Id.* ¶¶ 23–24, 35, 37).

1 The overall thrust of Plaintiffs' claims is that the Defendants breached their contracts
2 and committed fraud by accepting the upfront payments without any intention of ever
3 performing under the contracts. (*Id.* ¶¶ 40–49). Specifically, Plaintiffs assert claims against the
4 Defendants for racketeering in violation of federal RICO laws, fraud, breach of contract, breach
5 of the covenant of good faith and fair dealing, negligence, conversion, and unjust enrichment
6 (*Id.* ¶¶ 39–85). Plaintiffs assert that this Court has jurisdiction over these claims pursuant to
7 diversity jurisdiction under 28 U.S.C. § 1332 and supplemental jurisdiction under 28 U.S.C. §
8 1367 arising from this Court's original jurisdiction over Plaintiffs' RICO claims pursuant to 28
9 U.S.C. § 1331. (*Id.* ¶¶ 17–18).

10 **II. LEGAL STANDARD**

11 Rule 12(b)(6) of the Federal Rules of Civil Procedure mandates that a court dismiss a
12 cause of action that fails to state a claim upon which relief can be granted. *See North Star Int'l*
13 *v. Ariz. Corp. Comm'n*, 720 F.2d 578, 581 (9th Cir. 1983). When considering a motion to
14 dismiss under Rule 12(b)(6) for failure to state a claim, dismissal is appropriate only when the
15 complaint does not give the defendant fair notice of a legally cognizable claim and the grounds
16 on which it rests. *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). In considering
17 whether the complaint is sufficient to state a claim, the Court will take all material allegations
18 as true and construe them in the light most favorable to the plaintiff. *See NL Indus., Inc. v.*
19 *Kaplan*, 792 F.2d 896, 898 (9th Cir. 1986).

20 The Court, however, is not required to accept as true allegations that are merely
21 conclusory, unwarranted deductions of fact, or unreasonable inferences. *See Sprewell v. Golden*
22 *State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001). A formulaic recitation of a cause of action
23 with conclusory allegations is not sufficient; a plaintiff must plead facts showing that a
24 violation is *plausible*, not just possible. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing
25 *Twombly*, 550 U.S. at 555) (emphasis added).

1 In order to survive a motion to dismiss, a complaint must allege “sufficient factual
 2 matter, accepted as true, to state a claim to relief that is plausible on its face.” *Iqbal*, 556 U.S. at
 3 678 (internal quotation marks omitted). “A claim has facial plausibility when the plaintiff
 4 pleads factual content that allows the court to draw the reasonable inference that the defendant
 5 is liable for the misconduct alleged.” *Id.*

6 Furthermore, a claim of “fraud or mistake” must be alleged “with particularity.” Fed. R.
 7 Civ. P. 9(b). A complaint alleging fraud or mistake must include allegations of the time, place,
 8 and specific content of the alleged false representations and the identities of the parties
 9 involved. *See Swartz v. KPMG LLP*, 476 F.3d 756, 764 (9th Cir. 2007) (per curiam).

10 **III. DISCUSSION**

11 **A. Motion to Dismiss Amended Complaint**

12 In its Motion to Dismiss, Defendant Altium asserts that this Court lacks jurisdiction over
 13 the present action because Plaintiffs’ sole federal cause of action—the civil RICO claim—is
 14 insufficiently pled and because Plaintiffs have failed to show complete diversity of the parties
 15 to enable this Court to exercise diversity jurisdiction over their state law claims. (MTD Am.
 16 Compl. 2:24-6:15, ECF No. 173).¹ For the reasons addressed below, the Court agrees that
 17 Plaintiffs have failed to establish federal jurisdiction over this action.

18 **1. Diversity Jurisdiction**

19 “Jurisdiction founded on 28 U.S.C. § 1332 requires that the parties be in complete
 20 diversity and the amount in controversy exceed \$75,000.” *Matheson v. Progressive Specialty*
 21 *Ins. Co.*, 319 F.3d 1089, 1090 (9th Cir. 2003). Accordingly, “each of the plaintiffs must be a
 22 citizen of a different state than each of the defendants.” *Allstate Ins. Co. v. Hughes*, 358 F.3d
 23 1089, 1095 (9th Cir. 2004). Furthermore, in determining the citizenship of limited liability

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 25 ¹ On June 23, 2014, Plaintiffs voluntarily dismissed Defendant Altium. (Notice of Dismissal, ECF No. 217).
 However, because Defendant Hall joined Defendant Altium’s motion prior to the dismissal, the motion is still
 before the Court.

1 companies, the Ninth Circuit has held that “an LLC is a citizen of every state of which its
2 owners/members are citizens.” *Johnson v. Columbia Properties Anchorage, LP*, 437 F.3d 894,
3 899 (9th Cir. 2006).

4 As the party asserting diversity jurisdiction, Plaintiffs bear the burden of showing that
5 this Court holds jurisdiction over the present action. *Lew v. Moss*, 797 F.2d 747, 749 (9th Cir.
6 1986). In this case, however, several of the named defendants are limited liability companies,
7 and Plaintiffs have failed to allege the citizenship of the owner/members of these defendants.
8 (Am. Complaint ¶¶ 3–6, 9, 11–13, ECF No. 9). Instead, Plaintiffs merely allege that each LLC
9 defendant is a citizen of the state where its principal place of business is located. (*Id.*) These
10 allegations are insufficient to show the citizenship of the LLC defendants. *Johnson*, 437 F.3d at
11 899. Therefore, because Plaintiffs bear the burden of proof in establishing jurisdiction, their
12 failure to specify the citizenship of several named defendants is fatal to their assertion of
13 diversity jurisdiction. *See Kanter v. Warner-Lambert Co.*, 265 F.3d 853, 857–58 (9th Cir.
14 2001).

15 **2. Civil RICO Claim and Supplemental Jurisdiction**

16 Under 28 U.S.C. § 1367, “in any civil action of which the district courts have original
17 jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are
18 so related to claims in the action within such original jurisdiction that the form part of the same
19 case or controversy.” 28 U.S.C. § 1367(a). The sole claim under which Plaintiffs assert that
20 this Court holds original jurisdiction is the civil RICO claim. (Resp. to MTD 19:12-23, ECF
21 No. 187). Therefore, because Plaintiffs have failed to establish diversity jurisdiction, if the
22 RICO claim giving this Court supplemental jurisdiction is dismissed prior to an adjudication on
23 the merits, this Court should also dismiss the related state law claims. *See Herman Family*
24 *Revocable Trust v. Teddy Bear*, 254 F.3d 802, 805–06 (9th Cir. 2001) (“where there is no
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1 underlying original federal subject matter jurisdiction, the court has no authority to adjudicate
2 supplemental claims”).

3 The federal RICO statute authorizes a private right of action by “[a]ny person injured in
4 his business or property by reason of a violation of section 1962.” 18 U.S.C. § 1964(c). In
5 order to state a civil RICO claim under 1964(c), a plaintiff must sufficiently allege “(1) conduct
6 (2) of an enterprise (3) through a pattern (4) of racketeering activity (5) causing injury to
7 plaintiffs’ business or property.” *Ove v. Gwinn*, 264 F.3d 817, 825 (9th Cir. 2001) (citing 18
8 U.S.C. § 1964(c)) (quotations omitted). A “pattern of racketeering activity” requires “at least
9 two” predicate acts of racketeering activity. 18 U.S.C. § 1961(5). However, “while two acts are
10 necessary, they may not be sufficient” to establish a pattern. *H.J. Inc. v. Nw. Bell Tel. Co.*, 492
11 U.S. 229, 237–38 (1989) (quoting *Sedima, S.P.R.L. v. Imrex Co., Inc.*, 473 U.S. 479, 496 n.14
12 (1985)).

13 Moreover, because RICO claims involve underlying fraudulent acts, they are subject to
14 Rule 9(b)’s heightened pleading standard. *Edwards v. Marin Park, Inc.*, 356 F.3d 1058, 1065–
15 66 (9th Cir. 2004); *see* Fed. R. Civ. P. 9(b) (“In alleging fraud or mistake, a party must state
16 with particularity the circumstances constituting fraud or mistake.”). Accordingly, in order to
17 sufficiently plead their RICO claim, Plaintiffs must specify the time, place, and content of the
18 alleged underlying fraudulent acts, as well as the parties involved and their individual
19 participation. *Edwards*, 356 F.3d at 1066; *see also Moore v. Kayport Package Express, Inc.*,
20 885 F.2d 531, 541 (9th Cir. 1989) (racketeering allegations under section 1962(c) must identify
21 the time, place, and manner of each fraud plus the role of each defendant in the scheme).

22 Under the heading for the RICO claim in their Amended Complaint, Plaintiffs’
23 allegations consist of nothing more than an incorporation of their general allegations and a
24 conclusory recitation of the elements for a civil RICO claim. (Am. Complaint ¶¶ 50–56, ECF
25 No. 9) (“53. An enterprise existed, and each Defendant’s actions amount to conduct of the

1 enterprise through a knowing and willful pattern [of] racketeering activity in violation of 18
2 U.S.C. § 1962.”). Moreover, Plaintiffs’ general allegations fail to identify the time, place, or
3 manner of a single specific fraudulent act giving rise to their RICO claim. (*Id.* ¶¶ 20–49).
4 Plaintiffs also fail to indicate the individual participation of any of the defendants in the alleged
5 pattern of racketeering activity. (*Id.*). Therefore, Plaintiffs’ Amended Complaint fails to satisfy
6 Rule 9(b)’s pleading standard for its civil RICO claim, and the claim must be dismissed.

7 **3. Leave to Amend**

8 Pursuant to Rule 15(a), courts should “freely” give leave to amend “when justice so
9 requires,” and in the absence of a reason such as “undue delay, bad faith or dilatory motive on
10 the part of the movant, repeated failure to cure deficiencies by amendments previously allowed,
11 undue prejudice to the opposing party by virtue of allowance of the amendment, futility of the
12 amendment, etc.” *Foman v. Davis*, 371 U.S. 178, 182 (1962). Accordingly, leave to amend is
13 generally only denied when it is clear that the deficiencies of the complaint cannot be cured by
14 amendment. *See DeSoto v. Yellow Freight Sys., Inc.*, 957 F.2d 655, 658 (9th Cir. 1992).

15 Because the Court has found that Plaintiffs’ jurisdictional allegations in their Amended
16 Complaint are insufficient as a matter of law to establish the existence of subject matter
17 jurisdiction under a theory of either diversity jurisdiction or supplemental jurisdiction, the
18 Court dismisses Plaintiff’s Amended Complaint. However, because Plaintiffs may be able to
19 properly plead this Court’s jurisdiction by asserting more detailed allegations in their RICO
20 claim or by pleading the citizenship of the members of the various LLC defendants, the
21 Amended Complaint is dismissed without prejudice and Plaintiffs shall have leave to file a
22 second amended complaint that corrects the deficiencies. *See* 28 U.S.C. § 1653; *DeSoto*, 957
23 F.2d at 658; *see also, Smith v. McCullough*, 270 U.S. 456, 459 (1926) (“The established rule is
24 that a plaintiff, suing in federal court, must show in his pleading, affirmatively and distinctly,
25 the existence of whatever is essential to federal jurisdiction, and, if he does not do so, the court,

1 on having the defect called to its attention or on discovering the same, must dismiss the case,
2 unless the defect be corrected by amendment.”).

3 **B. Motion to Dismiss Cross-claims**

4 In its Motion to Dismiss Cross-claims, Defendant Altium seeks dismissal of Defendant
5 Hall’s Cross-claims (ECF No. 62) against it for contribution and indemnity. (MTD Cross-
6 claims 1:22-26, ECF No. 175). However, Defendant Hall’s cross-claims are dependent upon a
7 finding of liability for Plaintiffs’ claims in the Amended Complaint, which the Court has
8 already dismissed with leave to amend. Accordingly, the Court will deny the Motion to
9 Dismiss Cross-claims without prejudice and permit Defendant Altium to refile its motion
10 should Defendant Hall assert new cross-claims for indemnity and contribution based on claims
11 in a later amended complaint filed by Plaintiffs.

12 **C. Leave to File Second Amended Complaint**

13 In their Motion for Leave to File a Second Amended Complaint, Plaintiffs assert that
14 they have uncovered substantial evidence supporting additional claims against several
15 defendants as well as additional facts supporting their current claims. (Mot. for Leave to
16 Amend 2:3-23, ECF No. 168). However, in granting Defendant Altium’s Motion to Dismiss,
17 this Court has already dismissed the Amended Complaint without prejudice and given Plaintiffs
18 leave to file a second amended complaint. *See supra* section III.A. Moreover, the Proposed
19 Second Amended Complaint attached to Plaintiffs’ motion fails to correct some of the
20 deficiencies noted in this order by—for example—properly pleading the citizenship of the LLC
21 defendants. (Proposed SAC, ECF No. 168-1). Accordingly, Plaintiffs’ motion and Judge
22 Koppe’s Report & Recommendation are denied as moot.

23 **D. Briefing Schedule**

24 Having granted Plaintiffs leave to file a second amended complaint in a case that was
25 initiated over two years ago and where discovery is already closed, the Court finds that it is
necessary to amend the current scheduling deadlines (ECF Nos. 68, 148, 225) in order to avoid

1 confusion and ensure an expeditious resolution of the action. *See S. California Edison Co. v.*
2 *Lynch*, 307 F.3d 794, 807 (9th Cir. 2002) (“District courts have ‘inherent power’ to control
3 their dockets.”). Accordingly:

- 4 • Plaintiffs shall have until October 13, 2014 to file a second amended complaint. Failure to
5 file an amended complaint sufficiently pleading this Court’s jurisdiction over the present
6 matter by this date will result in dismissal of the case with prejudice.
- 7 • In accordance with Federal Rule of Civil Procedure 12, Defendants shall have 21 days from
8 the filing of the second amended complaint to file an answer, cross-claim, or motion to
9 dismiss. Likewise, any party against whom cross-claims are asserted shall have 21 days
10 from the filing of the cross-claim to file an answer or motion to dismiss those cross-claims.
11 Furthermore, if the Court denies the motions to dismiss, the responsive pleadings shall be
12 due 14 days from the entry of the Court’s order.
- 13 • All dispositive motions shall be due by the later of December 1, 2014 or 30 days after the
14 filing of an order resolving the last motion to dismiss claims or cross-claims arising from
15 the second amended complaint.
- 16 • A proposed joint pretrial order shall be due from the parties 30 days after the dispositive
17 motions deadline.

18 **IV. CONCLUSION**

19 **IT IS HEREBY ORDERED** that Defendant Altium’s Motion to Dismiss Amended
20 Complaint (ECF No. 173) is **GRANTED**. Plaintiffs’ Amended Complaint (ECF No. 9) is
21 **DISMISSED without prejudice**. Plaintiffs shall have until October 13, 2014 to file a second
22 amended complaint. Failure to file an amended complaint sufficiently pleading this Court’s
23 jurisdiction over the present matter by this date will result in dismissal of the case with
24 prejudice.
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DATED this 30 day of September, 2014.

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